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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,651	12/17/2001	Francis D. Palazzo	4665/6	1856

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EXAMINER

TRAN, HAI V

ART UNIT PAPER NUMBER

2611

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/022,651

Applicant(s)

PALAZZO ET AL.

Examiner

Hai Tran

Art Unit

2611

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 September 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-20.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

HAI TRAN  
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant traverses the rejection of 35 USC § 101.

In response, the Examiner respectfully disagrees because MPEP 2106.IV.B.1.(a) recites:

(a) Functional Descriptive Material: "Data Structures" Representing Descriptive Material Per Se or Computer Programs Representing Computer Listings Per Se

Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Claim 1 claims a data structure stored on computer-readable media that has functional interrelationship between electronic program guide and broadcast advertisement data structure but fails to claim functional interrelationships between its data structure and the computer software and hardware components which permit the data structure's functionality to be realized. As such, claim 1 is not statutory. Claims 2-20 depend directly or indirectly from independent claim 1, and as such claims 2-20 are directed to nonstatutory subject matter.

Applicant traverses 35 U.S.C. §102 Rejection of claims 1-5, 9-21.

Applicant argues, "Fries reference fails to disclose at least the "one or more data tags, each data tag used to provide information regarding a broadcast advertisement" and the "one or more electronic program guide action tags... used to define a valid electronic program guide feature... being related to the broadcast advertisement, a program associated with the broadcast advertisement, or both." In response, the Examiner respectfully disagrees because Fries disclose the STB receives the promotion data encoded into a private data packets, which include page images that is associated with information service, i.e., pay per view Advertiser, transmitted over the network (Col. 5, lines 36-Col. 6, lines 15 and Col. 6, lines 43-55). Fries further discloses that with a push of a button, the system tunes to a specified reserved channel that carries pages/display page image from Information Service, i.e. pay per view Advertiser (reads on Advertisement being broadcast) and then display the display page image corresponds to an advertisement home page of an advertiser (Col. 6, lines 48-55). Fries further discloses the display page image from advertiser having page elements displayed thereon including link to addition information (page elements including link reads on "one or more tags, each data tags used to provide information regarding a broadcast advertisement"). Thus, Fries discloses display a page image that corresponds to advertisement from advertisers and NOT to a channel, as alleged by Applicant.

Applicant further argue Fries reference also fails to disclose the "one or more electronic program guide action tags... used to define a valid electronic program guide feature... being related to the broadcast advertisement, a program associated with the broadcast advertisement, or both".

As discussed above, Fries discloses a page image that corresponds to advertisement from advertisers, therefore, the page ties to advertisement (i.e., pay per view advertisement page) from an advertiser and the page image have page elements displayed thereon including link (epg action tags) that tie to additional information pages. By selecting a link (epg action tag) within the page image, the display displays corresponding link's page (Fig.8 represents additional information page, i.e., purchasing form). Thus, each link is an "epg action tag" that relates to the page image (advertisement from an advertiser).

As such, the Examiner maintains the rejection..

A handwritten signature in black ink, appearing to read "Halter", with a long horizontal line extending to the right.